

| | |
|------------|---|
| Title | Supervised Visitation: Program Requirements (adopt Cal. Rules of Court, rule 5.240; repeal Cal. Standards Jud. Admin., § 26.2) |
| Summary | Adoption of rule 5.240 of the California Rules of Court and repeal of section 26.2 of the California Standards of Judicial Administration would convert the current recommended standards of practice for providers of supervised visitation to mandatory program requirements. |
| Source | Family and Juvenile Law Advisory Committee Hon. Michael Nash and Hon. Mary Ann Grilli, Co-chairs |
| Staff | Shelly Danridge, 415-865-7565, shelly.danridge@jud.ca.gov |
| Discussion | <p>Family Code section 3200 (Sen. Bill 1643 [Solis]; Stats. 1996, ch. 387) required the Judicial Council to develop standards for supervised visitation providers. To fulfill this mandate, the council adopted the Uniform Standards of Practice for Providers of Supervised Visitation, effective January 1, 1998, as section 26.2 of the California Standards of Judicial Administration.</p> <p>Senate Bill 1643 addressed the critical need for high-quality visitation services based on provisions that would protect children, their parents, and the visitation service providers as well as define the responsibilities and duties of providers. The bill's sponsor, the California Alliance Against Domestic Violence, had expressed concerns about the lack of neutral monitors; too-frequent reliance on mutual friends or relatives to supervise visits; and the small number of independent supervised visitation providers. The increasing number of cases requiring orders for supervised visitation also contributed to the need for standards of practice.</p> <p>The Uniform Standards of Practice for Providers of Supervised Visitation provided the first statewide framework to assist centers, agencies, and independent providers in delivering safe, accessible services for children and the custodial and noncustodial parents.</p> <p>At the time of adoption, a wide range of opinions surrounded specific provisions of the standards. While some professional practitioners preferred detailed standards, increased regulation, and extensive judicial oversight for supervised visitation programs, others found the standards to be too detailed, rigorous, and complicated to administer. After careful consideration, the standards were adopted as recommended practices, to allow program providers sufficient time to implement them.</p> |

Currently, most of the supervised visitation providers are able to comply with section 26.2, and there is general consensus among them that the section should be converted to a rule of court. The proposed rule, which incorporates section 26.2, would include the following immediate changes:

- (1) technical changes will be made to provisions to clarify them;
- (2) change the precatory language in the standards and make the provisions relating to service delivery mandatory (e.g., change *should* to *must*);
- (3) clarify language to be consistent with the statute (e.g., change *adults* to *noncustodial party*);
- (4) add the word *health* before *safety and welfare of the child* to reflect the public policy of the state;
- (5) require all providers to possess a current valid driver's license and access to a car seat if transporting a child;
- (6) require professional and therapeutic providers to complete a criminal background check and fingerprint clearance, have adequate general and liability insurance for staff and parties using the services, and comply with training requirements under (subd. (e));
- (7) require professional and therapeutic providers to develop a written protocol for suspension or termination of supervised visitation and establish procedures for referring parties back to court when visitation has been suspended or terminated; and
- (8) incorporate language that is currently in subdivision (p) [Additional requirements for professional and therapeutic providers] as part of subdivision (o) [Temporary suspension or termination of supervised visitation].

Furthermore, professional and therapeutic providers will have additional training requirements. These providers will have one year from the effective date of this rule to come into compliance with the training requirements.

Given the importance of sustaining minimum service levels, accountability for providers, and assurances to the court for court-ordered supervised visitation, the committee specifically requests

comments on the following issues:

1. What should be considered the minimum mandatory qualifications for nonprofessional providers (i.e., friends or relatives)?
2. Regarding subdivisions (d) [Qualifications of providers] and (e) [Training for providers], opportunities for training and education in the practice of supervised visitation do not exist in the state. In addition, there is no certification process or regulatory agency that governs the practices of supervised visitation providers. Therefore, what should be considered the minimum professional qualifications and required minimum training (content and hours) for providers?
3. Regarding subdivision (h) [Conflict of interest], the current language prohibits “an employee of or [someone] affiliated with any superior court in the county in which supervision is ordered from becoming a supervised visitation provider in that jurisdiction. This has raised issues related to employment and labor practices and has aroused concerns about neutrality and bias among practitioners. Should the standards retain the word *employee* but delete *affiliated with*?
4. Regarding subdivision (l) [Safety considerations for sexual abuse cases], practitioners have reported that the language in subdivisions (l)(3) and (4) are vague and ambiguous. When supervised visitation providers are handling cases involving sexual abuse, what safety measures (considerations) are necessary, at a minimum, to protect the health, safety, and welfare of the child?
5. What additional aspects of this proposed rule need further development or elaboration to address a variety of issues, including provisions relating to guidelines for cases in which there are allegations of domestic violence, child abuse, substance abuse, or special circumstances, referrals, fees, continuing education, and ethical principles?

The text of section 26.2 of the California Standards of Judicial Administration is attached, with revisions marked at pages 4–13.

Attachments

Section 26.2 of the California Standards of Judicial Administration would be repealed and Rule 5.240 of the California Rules of Court would be adopted, effective January 1, 2004 to read:

Sec. 26.2. Rule 5.240 Uniform Standards of Practice Program requirements of practice for supervised visitation providers of supervised visitation

(a) **[Scope of service]** This ~~section~~ rule defines the duties and obligations for providers of supervised visitation as set forth in Family Code section 3200. Unless specified otherwise, ~~the standards~~ these requirements are designed to apply to all providers of supervised visitation, whether the provider is a friend, relative, paid independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency. The goal of these standards is to assure the health, safety, and welfare of the child, adults, custodial and noncustodial parties, and providers of supervised visitation. Once safety is ~~assured~~, ensured, the best interest of the child is the paramount consideration at all stages and particularly in deciding the manner in which supervision is provided. Each court ~~is encouraged to~~ must, within one year of the effective date of this rule, adopt local court rules necessary to implement ~~these standards~~ this rule.

(b) **[Definitions]** ~~Family Code section 3200 defines a provider as any individual or any supervised visitation center who monitors visitation. Supervised visitation is contact between a noncustodial party and one or more children in the presence of a neutral third person. These standards and this definition are not applicable to supervision of visitation exchanges only, but may be useful in that context.~~

(1) "Provider" is defined in Family Code section 3200.

(2) "Supervised visitation" is contact between a noncustodial party and one or more children in the presence of a neutral third person.

(3) "Nonprofessional provider" is any provider who is not paid for providing supervised visitation services.

(4) "Professional provider" is any provider paid for providing supervised visitation services, or an independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency.

1 (5) “Therapeutic provider” is a licensed mental health professional paid for
2 providing supervised visitation services, including but not limited to the
3 following: a psychiatrist, psychologist, clinical social worker, marriage
4 and family counselor, or intern working under direct supervision. A
5 judicial officer may order therapeutic supervision for cases requiring a
6 clinical setting.

7
8 (6) “Noncustodial party” refers to a biological parent or other adult who is
9 authorized to have contact with the child.

10
11 (c) ~~[Qualifications, experience, and training of the provider]~~ **[Court control of**
12 **supervised visitation]** Who provides the supervision and the manner in which
13 supervision is provided depends on ~~different~~ factors including local resources,
14 the financial situation of the parties, and the degree of risk in each case. While
15 the court makes the final decision as to the manner in which supervision is
16 provided and any terms or conditions, the court may consider
17 recommendations by the attorney for the child, the parties and their attorneys,
18 Family Court Services staff, evaluators, therapists, and providers of supervised
19 visitation. The court retains the responsibility to bring the parties back before
20 the court if supervision services are suspended or terminated or if a review of
21 the case is necessary.

22
23 (d) **[Qualifications of providers]** There are three kinds of providers:
24 nonprofessional, professional, and therapeutic. All providers must have The
25 the following minimum qualifications for providers are as follows:

26
27 (1) ~~The nonprofessional provider is any person who is not paid for providing~~
28 ~~supervised visitation services.~~ Unless otherwise ordered by the court or
29 stipulated by the parties, the nonprofessional provider ~~should~~ must:

30
31 (i) be 21 years of age or older;

32
33 (ii) ~~—— have no conviction for driving under the influence (DUI)~~
34 ~~within the last 5 years;~~

35
36 ~~(iii)~~(ii) not have been on probation or parole ~~for~~ within the last 10
37 years;

38
39 ~~(iv)~~(iii) have no record of ~~a conviction~~ an arrest for, a charge with, or a
40 conviction of child molestation, child abuse, or other crimes
41 within the last 10 years ~~against a person;~~

- 1 ~~(v)~~(iv) have proof of automobile insurance, possess a valid current
2 drivers license, access to a car seat, and no conviction for
3 driving under the influence (DUI) within the last 5 years if
4 transporting the child;
5
6 ~~(vi)~~(v) have no civil, criminal, or juvenile restraining orders within the
7 last 10 years;
8
9 ~~(vii)~~(vi) have no current or past court order in which the provider is the
10 person being supervised;
11
12 ~~(viii)~~(vii) not be financially dependent upon the person being supervised;
13
14 ~~(ix)~~(viii) have no conflict of interest as ~~per~~ under subdivision ~~(f)~~ (h) of
15 this section; and
16
17 ~~(x)~~(ix) agree to adhere to and ~~enforce~~ follow the court order regarding
18 supervised visitation.
19

20 (2) ~~The professional provider is any person paid for providing supervised~~
21 ~~visitation services, or an independent contractor, employee, intern, or~~
22 ~~volunteer operating independently or through a supervised visitation~~
23 ~~center or agency. Unless otherwise ordered by the court, the~~ The
24 professional and therapeutic provider ~~should~~ must;

- 25
26 (i) be 21 years of age or older;
27
28 (ii) ~~—— have no conviction for driving under the influence (DUI)~~
29 ~~within the last 5 years;~~
30
31 ~~(iii)~~(ii) not have been on probation or parole ~~for~~ within the last 10
32 years;
33
34 ~~(iv)~~(iii) have no record of ~~a conviction~~ an arrest for, a charge with, or a
35 conviction of child molestation, child abuse, or other crimes
36 within the last 10 years ~~against a person;~~
37
38 ~~(v)~~(iv) have proof of automobile insurance, possess a valid current
39 drivers license, access to a car seat, and no conviction for
40 driving under the influence (DUI) within the last 5 years if
41 transporting the child;
42

- ~~(v)~~(5) developmental needs of children;
- ~~(vi)~~(6) legal responsibilities and obligations of a provider;
- ~~(vii)~~(7) cultural sensitivity;
- ~~(viii)~~(8) conflicts of interest;
- ~~(ix)~~(9) confidentiality requirements and limitations; ~~and~~
- ~~(x)~~(10) ~~issues relating to~~ dynamics of domestic violence, child abuse, sexual abuse, and substance abuse;
- (11) techniques for dealing with high-conflict or difficult situations;
- (12) effects of separation and divorce and the impact on children and their parents;
- (13) local court practices and relevant state law;
- (14) CPR and first aid;
- (15) maintaining a neutral role; and
- (16) ethical principles involved in supervision of visits.

~~(d)~~**(f) [Safety and security procedures]** All providers ~~should~~ must make every reasonable efforts to ~~assure~~ ensure the health, safety, and welfare of the child and ~~adults~~ custodial and noncustodial parties during the visitation. Supervised visitation centers ~~should~~ must establish, with the assistance of the local law enforcement agency, a written protocol that describes what emergency assistance and responses can be expected from the local police or sheriff's department. In addition, the professional and therapeutic provider ~~should~~ must do all the following:

- (1) Establish and set forth in writing minimum safety and security procedures and inform the parties of these procedures prior to the commencement of supervised visitation;
- (2) Conduct a comprehensive intake and screening to assess the nature and degree of risk for each case. The procedures for intake should include separate interviews with the parties before the first visit. During the interview, the provider ~~should~~ must obtain identifying information and explain the reasons for temporary suspension or termination of a visit as specified in subdivision (o) of this section. If the child is of sufficient age and capacity, the provider ~~should~~ must include ~~him or her~~ the child in ~~part of~~ the intake or orientation process. Any discussion ~~should~~ must be presented to the child in a ~~manner appropriate to the child's developmental stage~~ an age-appropriate manner;
- (3) Obtain during the intake process; (i) copies of any protective order, (ii) current court orders, (iii) any Judicial Council form relating to supervised visitation orders, (iv) a report of any written records of allegations of

domestic violence or abuse, and (v) in the case of a child's chronic health condition, an account of his or her health needs;

(4) Establish written procedures to follow in the event a child is abducted during supervised visitation; and

(5) Suspend or terminate supervised visitation if the provider determines that the risk factors present are placing in jeopardy the safety and welfare of the child or provider as enumerated in subdivision (i)(o) of this section.

(e)(g)[Ratio of children to provider] ~~The ratio of children to a professional provider should be contingent upon:~~ A professional provider may determine the appropriate ratio of children to provider for each visit based upon:

(1) The degree of risk factors present in each case;

(2) The nature of supervision required in each case;

(3) The number and ages of the children to be supervised during a visit;

(4) The number of people visiting the child during the visit;

(5) The duration and location of the visit; and

(6) The experience of the provider.

(f)(h)[Conflict of interest] ~~All providers should~~ must maintain a neutral role by refusing to discuss the merits of the case, or to agree with or support one party over another. Any discussion between a provider and the parties ~~should~~ must be ~~for~~ limited to the purposes of arranging visitation and providing for the safety of the children. In order to avoid a conflict of interest, ~~no~~ providers ~~should~~ must not:

(1) Be financially dependent on the person being supervised;

(2) Be an employee of the person being supervised;

(3) Be an employee of ~~or affiliated with~~ any superior or municipal court in the county in which the supervision is ordered unless specified in the employment contract; or

(4) Be in an intimate relationship with the person being supervised.

1 ~~(g)~~**(i)[Maintenance and disclosure of records]** The professional and therapeutic
2 provider ~~should~~ must keep a record for each case, including ~~but not limited to~~
3 the following: (i) a written record of each contact and visit including the date,
4 time, and duration of the contact or visit; (ii) who attended the visit; (iii) a
5 summary of activities during the visit; (iv) actions taken by the provider,
6 including any interruptions, termination of a visit, and reasons for these
7 actions; (v) an account of critical incidents, including physical or verbal
8 altercations and threats; (vi) violations of protective or court visitation orders;
9 (vii) any failure to comply with the terms and conditions of the visitation as ~~per~~
10 under subdivision ~~(i)~~ (k) ~~of this section~~; and (viii) any incidence of abuse as
11 required by law.
12

13 (1) Case ~~recordings~~ records and reports ~~should~~ must be limited to facts,
14 observations, and direct statements made by the parties, not personal
15 conclusions, suggestions, or opinions of the provider. All contacts by the
16 provider in person, in writing, or by telephone with either party, the
17 children, the court, attorneys, mental health professionals, and referring
18 agencies, ~~should~~ must be documented in the case file. All entries ~~should~~
19 must be dated and signed by the person recording the entry.
20

21 (2) If ordered by the court, or requested by either party or the attorney for
22 either party or the attorney for the child, a report about the supervised
23 visit ~~should~~ must be produced. These reports ~~should~~ must include facts,
24 observations, and direct statements and not opinions or recommendations
25 regarding future visitation unless ordered by the court. A copy of any
26 report ~~should~~ must be sent to all parties, their attorneys, and the attorney
27 for the child.
28

29 (3) Any identifying information about the parties and the child, including
30 addresses, telephone numbers, places of employment, and schools, ~~is~~
31 must be kept confidential; ~~should and must~~ must not be disclosed; and ~~should~~
32 must be deleted from documents before releasing them to any court,
33 attorney, attorney for the child, party, mediator, evaluator, mental health
34 professional, social worker, or referring agency, except as required in
35 reporting suspected child abuse.
36

37 ~~(h)~~**(j)[Confidentiality]** Communications between parties and providers of
38 supervised visitation are not protected by any privilege of confidentiality. The
39 psychotherapist-patient privilege does not apply during therapeutic
40 supervision. The professional and therapeutic provider ~~should, whenever~~
41 ~~possible,~~ must maintain confidentiality regarding the case except when (i)
42 ordered by the court; (ii) subpoenaed to produce records or testify in court; (iii)
43 requested by a mediator or evaluator in conjunction with a court-ordered

1 mediation, investigation, or evaluation; (iv) required by Child Protective
2 Services; or (v) requested by law enforcement.

3
4 **(i)(k)[Delineation of terms and conditions]** ~~The sole responsibility for~~
5 ~~enforcement of all the terms and conditions of any supervised visitation is the~~
6 ~~provider's. The provider is responsible for following all of the terms and~~
7 ~~conditions of any supervised visitation order. The terms and conditions for~~
8 ~~any supervised visitation, unless~~ Unless otherwise ordered by the court, ~~are as~~
9 ~~follows the provider must:~~

- 10
11 (1) Monitor conditions to ~~reasonably assure~~ ensure the health, safety, and
12 welfare of the child;
- 13
14 (2) ~~Enforce-Follow~~ the frequency and duration of the visits as ordered by the
15 court;
- 16
17 (3) Avoid any attempt to take sides with either party;
- 18
19 (4) Ensure that all contact between the child and the noncustodial party is
20 within the provider's hearing and sight at all times, and that discussions
21 are audible to the provider, ~~unless a different order is issued by the court;~~
- 22
23 (5) Speak in a language spoken by the child and noncustodial party;
- 24
25 (6) Allow no derogatory comments about the other parent, his or her family,
26 the caretaker, the child, or the child's siblings;
- 27
28 (7) Allow no discussion of the court case or possible future outcomes;
- 29
30 (8) Allow ~~no~~ neither any provider nor the child to be used to gather
31 information about the other party or caretaker or to transmit documents,
32 information, or personal possessions;
- 33
34 (9) Allow no spanking, hitting, or threatening of the child;
- 35
36 (10) Allow no visits to occur while the visiting party appears to be under the
37 influence of alcohol or illegal drugs;
- 38
39 (11) Allow no emotional, verbal, physical, or sexual abuse; ~~and~~
- 40
41 (12) Ensure that the parties follow any additional rules set forth by the
42 provider or the court; ~~and~~
- 43

1 (13) Allow no other parties to attend visits unless their attendance has been
2 specifically approved by the court or by both parties in writing.

3
4 ~~(j)~~(l) **[Safety considerations for sexual abuse cases]** ~~In cases where there are~~
5 ~~allegations of sexual abuse, the following additional terms and conditions are~~
6 ~~applicable to all providers unless otherwise authorized by the court. Unless~~
7 ~~otherwise authorized by the court, all providers must adhere to the following~~
8 additional terms and conditions in cases of sexual abuse:

- 9
10 (1) Allow no exchanges of gifts, money, or cards;
11
12 (2) Allow no photographing, audiotaping, or videotaping of the child;
13
14 (3) Allow no physical contact with the child that appears inappropriate or
15 sexualized, such as lap sitting, hair combing, stroking, hand holding,
16 prolonged hugging, wrestling, tickling, horseplaying, changing diapers, or
17 accompanying the child to the bathroom;
18
19 (4) Allow no whispering, passing notes, hand signals, or body signals that
20 appear inappropriate or sexualized; and
21
22 (5) Allow no supervised visitation in the location where the alleged sexual
23 abuse occurred.

24
25 ~~(k)~~(m) **[Legal responsibilities and obligations of a provider]** All providers of
26 supervised visitation ~~have the following responsibilities and obligations~~ must:

- 27
28 (1) ~~Advise~~ Inform the parties before commencement of supervised visitation
29 that no confidential privilege exists;
30
31 (2) Report suspected child abuse to the appropriate agency, as provided by
32 law, and inform the parties of the provider's obligation to make such
33 reports;
34
35 (3) Implement the terms and conditions ~~as per~~ under subdivision ~~(i)~~ (k) ~~of~~
36 this section; and
37
38 (4) Suspend or terminate visitation ~~as per~~ under subdivision ~~(m)~~ (o) ~~of this~~
39 section.

40
41 ~~(h)~~(n) **[Additional legal responsibilities for professional and therapeutic**
42 **providers]** In addition to the preceding legal responsibilities and obligations,
43 the professional and therapeutic provider ~~should~~ must:

- (1) Prepare a written contract to be signed by the parties before commencement of the supervised visitation. The contract ~~should~~ must inform each party of the terms and conditions of supervised visitation;
- (2) Review custody and visitation orders relevant to the supervised visitation;
- (3) Implement an intake and screening procedure ~~as per~~ under subdivision ~~(d)(f)~~ (2) of this section; and
- (4) ~~Comply with additional requirements as per subdivision (n) of this section.~~ Develop a written protocol for suspension or termination of visitation services; and
- (5) Establish and set forth in writing procedures for referring parties back to the court when visitation has been suspended or terminated.

~~(m)~~(o) **[Temporary suspension or termination of supervised visitation]** All providers ~~should~~ must make every reasonable efforts to provide a safe visit for the child and the noncustodial party. ~~However, if a provider determines that the rules of the visit have been violated, the child has become acutely distressed, or the safety of the child or the provider is at risk, the visit may be temporarily interrupted, rescheduled at a later date, or terminated. All interruptions or terminations of visits should be recorded in the case file. All providers should advise both parties of the reasons for interruption of a visit or termination.~~ Visitation may be temporarily interrupted, rescheduled at a later date, or terminated if a provider determines that the rules of the visit have been violated, the child has become acutely distressed, or the safety of the child or the provider is at risk. When suspending or terminating visitation, professional and therapeutic providers must:

- (1) State the reasons for suspension or termination of supervised visitation in writing and provide copies to both parties, their attorneys, the attorney for the child, and the court;
- (2) Record all interruptions or terminations of visits in the case file; and
- (3) Inform both parties in writing of the reasons for interruption of a visit or termination of services.

~~(n)~~(p) **[Additional requirements for professional and therapeutic providers]**
~~The professional and therapeutic provider should also state in writing the~~

1 reasons for temporary suspension or termination of supervised visitation in
2 writing and provide them to both parties, their attorneys, the attorney for the
3 child, and the court.
4
5
6